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FILED
OCT 12 1953
HAROLD B. WILLEY, Clerk

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

No. 405

JACK SMITH,

Petitioner,

vs.

STATE OF TENNESSEE

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF TENNESSEE AND BRIEF IN SUPPORT THEREOF.

JOHN A. ARMSTRONG,
Counsel for Petitioner.

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IN THE SUPREME COURT OF THE UNITED STATES

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JACK SMITH,

Petitioner,

versus

THE STATE OF TENNESSEE

PETITION FOR A WRIT OF CERTIORARI

Your Petitioner would respectfully show to the Court:

1

That the petitioner is a citizen and resident of the State of Tennessee.

That the defendant the State of Tennessee is one of the States of the United States of America.

That the defendant Roy Beeler is the regularly appointed, qualified and acting Attorney General of the State of Tennessee and as such is charged with the prosecution of criminal offenses occurring in such State.

2

That the petitioner at the January, 1953, term of the Criminal Court was indicted on a charge of possessing whiskey, a misdemeanor under Tennessee Law.

Record—pp1
Williams Tennessee Code
Section 11216

On January 14, 1953, the petitioner was found guilty of such offense and a fine of $200.00 and a jail sentence of 60 days was imposed.

Record—pp1

On January 16, 1953, the defendant regularly entered his motion for a new trial.

Record—pp2

On January 19, 1953, the court overruled his motion for a new trial which action the petitioner excepted.

Record—pp3

On January 19, 1953, the court pronounced judgment in accordance with the verdict of the jury.

Record—pp4

On January 19, 1953, the petitioner appealed to the Supreme Court of the State of Tennessee which appeal was granted.

Record—pp4

On June 5, 1953, the Supreme Court of the State of Tennessee rendered a written opinion in which it sustained and affirmed the lower court.

Record—pp51-53

On June 12, 1953, the petitioner filed a petition for a rehearing in the Supreme Court of the State of Tennessee.

Record—pp54

On July 17, 1953, the Supreme Court of Tennessee denied petition to rehear.

Record—pp55-56

On August 11, 1953, the petitioner filed his praecipe.
Record—pp56

Your petitioner avers that he is a citizen of the United States of America and that by reason of the criminal proceedings set forth in Section "2" of this petition he was deprived of his liberty and property under the Fifth and Fourteenth Amendments to the Constitution of the United States of America for the following reason:

The petitioner was deprived of his liberty and property by reason of a search made of his property by an unlawful, illegal and void search warrant.

Section 11899 of the 1932 Tennessee Code provides that a search warrant can only be issued on a probable cause supported by affidavit, etc.

Section 11900 of the 1932 Tennessee Code provides that the magistrate before issuing the warrant shall examine on oath the complainant and any witness he may produce, etc.

Section 11901 of the 1932 Tennessee Code provides "If the magistrate is satisfied of the existence of the grounds of the application, or that there is probable ground to believe their existence, he shall issue a search warrant signed by him, directed to the sheriff, and constable, or any peace officer, commanding him forthwith to search the person or place named for the property specified, and to bring it before the magistrate."

The search warrant in this case was issued by fraud, collusion and willful failure to exercise discretion on the part of the Justice of the Peace (Magistrate) and was issued in direct violation of the Statutes quoted above because: (I) The affiant R. L. Seaver did not read the affidavit upon which the warrant was issued; (2) that no informant had given him any of the information upon which the affidavit

was based and upon which the search warrant issued; (3) that the Justice of the Peace signed the affidavit before the affiant R. L. Seaver signed the same; (4) that the affidavit was not signed in the presence of the Justice of the Peace; (5) that the affiant did not swear to the affidavit; (6) that the Justice of the Peace who issued the warrant did not read the affidavit and therefore could not have used his judicial discretion in the issuance of same.

Note: Proper references to the record will be made in the brief to substantiate the above statements.

There was no other evidence introduced upon the trial of the cause upon which a verdict of guilty could be based except that evidence obtained by reason of the illegal and void search warrant.

4

That your petitioner has exhausted all of his remedies in the courts of the State of Tennessee his conviction having been affirmed by the Supreme Court of the State of Tennessee, such court being the court of last resort having criminal jurisdiction in the State of Tennessee.

WHEREFORE, the petitioner therefore prays:

That a writ of certiorari issue to the Supreme Court of the State of Tennessee to the end that the action of such court be reversed and for nothing held.

This is the first application for a writ of certiorari in this cause.

JOHN A. ARMSTRONG,
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Greeneville, Tennessee.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

No. 405

JACK SMITH,

Petitioner,

versus

THE STATE OF TENNESSEE AND ROY BEELER, ATTORNEY GENERAL,

Defendants

BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

Section 11899 of the 1932 Tennessee Code provides as follows:

> PROBABLE CAUSE AND AFFIDAVIT REQUIRED.—It can only be issued on a probable cause, supported by affidavit, naming or describing the person, and particularly describing the property, and the place to be searched.

Section 11900 of the 1932 Tennessee Code as amended provides:

> COMPLAINANT AND WITNESSES EXAMINED ON OATH: CONTENTS OF AFFIDAVIT—The magistrate, before issuing the warrant, shall examine on oath the complainant

> and any witnesses he may produce, and take their affidavits in writing, and cause them to be subscribed by the persons making them; and the affidavits must set forth facts tending to establsh the grounds of the application, or probable cause for believing that they exist.

Section 11901 of the 1932 Tennessee Code provides as follows:

> WARRANT TO ISSUE, IF CAUSE SHOWN—If the magistrate is satisfied of the existence of the grounds of the application, or that there is probable ground to believe their existence, he shall issue a search warrant signed by him, directed to the sheriff, any constable, or any peace officer, commanding him forthwith to search the person or place named for the property specified, and to bring it before the magistrate.

The undisputed evidence in this case shows that the search warrant in this case was issued by fraud, collusion and willful failure to exercise discretion on the part of the Justice of the Peace (Magistrate) and was issued in direct violation of the Statutes quoted above because: (I) The affiant R. L. Seaver did not read the affidavit upon which the warrant issued; (2) that no informant had given him any of the information upon which the affidavit was based and upon which the search warrant issued; (3) that the affidavit was not signed in the presence of the Justice of the Peace; (5) that the affiant did not swear to the affidavit; (6) that the Justice of the Peace who issued the warrant did not read the affidavit and therefore could not have used his judicial discretion in the issuance of same.

> Testimony R. L. Seaver, Record—pp5-13.
> Testimony Mark Hendry, Record—pp13-15.

The search warrant appears to be regular upon its face.

> Search Warrant, Record—pp6.

The petitioner through his attorney seasonably excepted to the introduction of such search warrant, which objection was overruled and to which action the petitioner excepted.

Record—pp37-38.

There is no evidence in the record upon which a conviction of the petitioner could be sustained except such evidence as was obtained by reason of the search warrant mentioned above but both the trial court and the Supreme Court of the State of Tennessee held that the petitioner could not go behind the face of the search warrant and show the true facts.

Opinion Trial Court, Record—pp38.

Opinion Supreme Court, Record—pp51.

By reason of the facts set forth above your petitioner respectfully insists that he has been deprived of his liberty and property under the Fifth and Fourteenth Amendments of the Constitution of the United States of America, without due process of law.

Respectfully submitted,

JOHN A. ARMSTRONG,
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Post Office Box 337,
Greeneville, Tennessee.

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SUPREME COURT OF THE UNITED STATES.

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JACK SMITH, Petitioner,
v.
STATE OF TENNESSEE, Respondent.
No. 405.

BRIEF OPPOSING ISSUANCE OF WRIT.

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SUPREME COURT OF THE UNITED STATES.

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JACK SMITH, Petitioner,
v.
STATE OF TENNESSEE, Respondent.
No. 405.

BRIEF OPPOSING ISSUANCE OF WRIT.

MAY IT PLEASE THE COURT:

The petition for certiorari arises out of the following state of facts:

The petitioner's residence in Greene County, Tennessee, was searched by a number of officers having in their possession a search warrant completely valid under the appropriate Tennessee authorities. See Jackson v. State, 153 Tenn. 431. A considerable quantity of intoxicating liquor was found, Greene County being territory within which the possession of intoxicating liquor is unlawful.

Petitioner was duly indicted for the unlawful possession of this intoxicating liquor. Upon the trial as an attack upon the search warrant in question, he undertook to show that its averments purportedly made under oath were false and that, therefore, it was illegal. This testimony was excluded by the trial court and the conviction of the petitioner followed. Upon appeal, the Supreme Court of Tennessee, the court of last resort, affirmed such conviction and sentenced the petitioner to the punishment imposed by the lower court. In so doing it followed its well settled rule to the effect that it would not permit a collateral attack upon the truth or falsity of the averments of the affidavit for search warrant but that the face of the record was conclusive. See Bragg v. State, 155 Tenn. 20; Reed v. State, 162 Tenn. 643; and Harvey v. State, 166 Tenn. 227.

BRIEF AND ARGUMENT.

At the very outset of this brief, the respondent wishes to remark that the petition falls far short of complying with the rules of this Court in connection with such petitions. It certainly is not shown that any federal question of substance was raised and decided adversely to the petitioner by the Supreme Court of Tennessee nor does there appear from such petition any suggestion as to why the discretionary powers of this Court should be invoked.

In Tennessee the rule of exclusion of testimony obtained by an unlawful search is purely a judicial doctrine promulgated by the Supreme Court of Tennessee to prevent the flaunting of the constitutional rights of its citizens. See Hughes v. State, 145 Tenn. 544; Clark v. State, 159 Tenn. 215. The respondent thinks, therefore, that since the rule of exclusion proceeds from the authority of the courts, this same Court which formulated this doctrine possesses ample power to decline to permit a collateral inquiry into the truth of the averments in the affidavit required for the issuance of the search warrant and that the petition can be denied upon this ground.

But for an equally valid reason, its prayer should not be granted. In Wolf v. Colorado, 338 U. S. 25, this Court held that the Fourteenth Amendment does not forbid the admission of relevant evidence in a state court even though obtained by an unreasonable search and seizure. As noted in the concurring opinion of Mr. Justice Black, the exclusionary rule is not a command of the Fourth Amendment and, if not such, the Fourteenth Amendment does not place such exclusionary rule upon the states.

In conclusion, respondent respectfully insists that the petition lacks merit and should be denied.

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I hereby certify that I have furnished to John A. Armstrong, Greeneville, Tennessee, Attorney for the Petitioner, a copy of this reply.

This October 13, 1953.

Nat Tipton.